

M e m o r a n d u m**245.1635**

To: O. A. McCarty
Compliance Planning and
Evaluation Unit

August 1, 1978

From: Mary C. Armstrong
Legal

Subject: P.V.M. Weight Reduction Plan
J. B. W---, Inc., SS --- XX XXXXXX

This is in response to your memorandum of May 10, 1978 concerning the correct application of tax to a product called P.V.M. With your memorandum you enclosed a memorandum from Mr. Charles O. Engstrom of our Marysville office who noted that tax is being charged by some stores and not by others.

P.V.M. is described on its label as "the P.V.M. Weight Reduction Plan... a High Protein Powder with vitamins and minerals.... A formulated meal replacement when added to orange juice or low-fat milk..."

Regulation 1602(a)(5) provides that the term "food products" does not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supp, or dietary adjunct, and to any such product (B) which is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally one or more of the following areas of human nutrition:

1. Vitamins
2. Proteins
3. Minerals
4. Caloric intake

We are of the opinion that the P.V.M. Weight Reduction Plan does not qualify as a "food product" under Regulation 1602(a)(5). It is clearly described on its label as a "weight reduction plan" and is designed to increase vitamin and mineral intake and decrease caloric intake. Accordingly, tax should apply to the sale of this item.

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